

## **Assembly Bill No. 914**

### **CHAPTER 322**

An act to amend Sections 67042 and 67091 of, and to add Section 77965 to, the Food and Agricultural Code, relating to state commissions.

[Approved by Governor September 26, 2011. Filed with  
Secretary of State September 26, 2011.]

#### **LEGISLATIVE COUNSEL'S DIGEST**

AB 914, Atkins. State Commissions: market information.

(1) Existing law establishes the California Avocado Commission within the state government composed of 10 avocado producers, as specified, to, among other duties, promote the sale of avocados. Existing law requires the commission to establish 5 districts within the state, each representing 20% of the avocado production in the state, and to reapportion those districts every 5th year according to specified procedures, including by determining the average number of pounds of fruit produced in each ZIP Code area in the 2 crop years prior to a specified referendum. Existing law makes it a misdemeanor to willfully fail to render or furnish a report, statement, or record required by the commission.

This bill would authorize the commission to require producers to provide information as determined by the commission pertaining to the locations at which avocados are produced and the annual volume of avocados produced at each location.

The bill would also authorize the commission to utilize the information provided to the commission for specified purposes, including food safety and communications. The bill would also revise the provision requiring the commission to reapportion those districts every 5th year by determining the average number of pounds of fruit produced in each ZIP Code area in the 5, rather than 2, crop years prior to a specified referendum.

By expanding the scope of the information the commission may require, the bill would expand the scope of an existing crime, thereby imposing a state-mandated local program.

(2) Existing law creates the California Cut Flower Commission, composed of 13 members, with specified powers and duties, including, but not limited to, conducting, and contracting with others to conduct, production research, including the study, analysis, accumulation, and dissemination of information obtained from that research.

This bill would require the commission to annually specify the types and varieties of cut flowers for which it is collecting, from participating producers, market price information based on sales, and would require dissemination of that information to these producers. The bill would require that the identity of each producer reporting the information and the

information reported be kept confidential and not be made public under any circumstances. The commission would be authorized to disclose information that gives industry totals, averages, and other similar data.

(3) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

*The people of the State of California do enact as follows:*

SECTION 1. Section 67042 of the Food and Agricultural Code is amended to read:

67042. Beginning in the 2000–01 marketing season, districts shall be reapportioned every fifth year in accordance with the following procedures:

(a) The commission shall determine the average number of pounds of fruit actually produced by producers in each United States Postal Service ZIP Code area in California in the five crop years prior to a referendum conducted pursuant to Section 67131. The average number of pounds of fruit so determined and the poundage from each year shall be used only for purposes of this section.

(b) The commission shall, by adding the pounds in each ZIP Code area, determine the total average number of pounds of avocados produced in California in the five prior crop years.

(c) The commission shall divide the total pounds by five and the resulting number shall be known as the “pro rata poundage.”

(d) The commission shall determine if the poundage in any existing district, as specified in Section 67041, varies by more than 10 percent from the pro rata poundage. In the event that such variance exists, the commission shall draw new district lines so that no district shall vary by more than 10 percent from the pro rata poundage.

SEC. 2. Section 67091 of the Food and Agricultural Code is amended to read:

67091. The powers and duties of the commission include, but are not limited to, all of the following:

(a) Adopt and, from time to time, alter, rescind, modify, and amend all proper and necessary rules, procedures, and orders to carry out this chapter and in the exercise of its powers and the performance of its duties, including the adoption of rules to regulate appeals from any rule, procedure, or order of the commission.

(b) Administer and enforce this chapter, and to do and perform all acts and exercise all powers incidental to or in connection with or deemed reasonably necessary, proper, or advisable to effectuate the purposes of this chapter.

(c) Employ a person, to serve, at the pleasure of the commission, as president and chief executive officer of the commission and other personnel, including legal counsel.

(d) Establish offices, incur expenses, enter into any and all contracts and agreements, and create liabilities and borrow funds in advance of receipt of assessments that may be necessary, at the discretion of the commission, for the proper administration and enforcement of this chapter and the performance of its duties.

(e) Keep accurate books, records, and accounts of all of its dealings, which books, records, and accounts are subject to an annual independent audit by an auditing firm approved by the secretary. The independent audit shall be made a part of an annual report to all producers and handlers of avocados, copies of which shall also be submitted to the Legislature. In addition, the secretary may, as he or she determines necessary, conduct, or cause to be conducted, a fiscal and compliance audit of the commission.

(f) Promote the sale of avocados by advertising and other promotional means for the purpose of maintaining and expanding present markets and creating new and larger intrastate, interstate, and foreign markets for avocados and to educate and instruct the public with respect to avocados and the uses of the several varieties and the healthful properties and nutritional value of avocados.

(g) Enter into cost-sharing advertising with other products considered, by the commission, to be fair and equitable to both parties.

(h) Educate and instruct the wholesale and retail trade with respect to proper methods of handling and selling avocados; arrange for the performance of dealer service work providing display and other promotional materials; make market and inventory surveys and analyses; present facts to and negotiate with state, federal, and foreign agencies on matters which affect the avocado industry; and undertake any other activities which the commission may determine appropriate for the maintenance and expansion of present markets and the creation of new markets for avocados.

(i) Make, in the name of the commission, contracts to render service in formulating and conducting plans and programs, and any other contracts or agreements that the commission may deem necessary for the promotion of the sale of avocados.

(j) Conduct and contract with others to conduct scientific research, including the study, analysis, dissemination, and accumulation of information obtained from the research or elsewhere respecting the inventory, marketing, and distribution of avocados. The results of any research conducted by or on behalf of the commission may be used by the commission in any way it deems appropriate, and notwithstanding any other provision of law, may be maintained in confidence by the commission and not disseminated to any person not subject to this chapter.

(k) Accept and match contributions of private, local, state, or federal funds and make contributions of commission funds to other persons or to local, state, or federal agencies for purposes of promoting, enhancing, and maintaining the California avocado industry.

(l) Publish and distribute without charge, a bulletin or other communication for dissemination of information relating to inventory, marketing, and other information of value to the commission and the avocado industry to producers, handlers, and the public.

(m) Establish an assessment rate to defray operating costs of the commission.

(n) Establish an annual budget.

(o) Investigate and prosecute civil violations of this chapter and file complaints with appropriate law enforcement agencies or officers for suspected criminal violations of this chapter.

(p) Carry out the requirements prescribed in Chapter 9 (commencing with Section 44971) of Division 17.

(q) To provide to the secretary, on a quarterly basis, a summary of the programs, activities, and costs under review for the next marketing season.

(r) Require producers to provide information as determined by the commission pertaining to the locations at which avocados are produced and the annual volume of avocados produced at each location. The information shall be provided in a time and manner prescribed by the commission and shall be subject to the confidentiality provisions of Section 67104.

(s) Utilize information provided to the commission for the purposes of food safety, communications, reapportionment of districts, and the conduct of elections and referenda.

SEC. 3. Section 77965 is added to the Food and Agricultural Code, to read:

77965. (a) To prevent unfair trade practices which are detrimental to California's cut flower industry, including, but not limited to, deception and misinformation, the commission shall annually specify the types and varieties of cut flowers for which it shall collect from producers who participate, and disseminate to these producers, market price information based on sales which have occurred.

(b) The identity of each producer reporting the information and the information reported pursuant to this section and Section 6254 of the Government Code shall be kept confidential and not made public under any circumstances. Information that gives industry totals, averages, and other similar data may be disclosed by the commission.

(c) The procedure for the collection and dissemination of the information specified in this section shall be adopted by the commission and approved by the secretary.

SEC. 4. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime

within the meaning of Section 6 of Article XIII B of the California Constitution.

O